

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

CHARLES FOLEY,

Plaintiff, :

v.

Case No. 2:21-cv-5234  
Judge Sarah D. Morrison  
Magistrate Judge Kimberly A.  
Jolson

WILDCAT INVESTMENTS,  
LLC, :

Defendant.

**ORDER**

This matter is before the Court on Plaintiff's Motion for Conditional Class Certification, For Approval and Distribution of Notice, and for Disclosure of Contact Information. (ECF Nos. 14, 15.)

On May 19, 2023, the Sixth Circuit Court of Appeals issued a decision in *Clark v. A&L Homecare & Training Ctr., LLC*, \_\_ F.4th \_\_, 2023 WL 3559657 (6th Cir. 2023). That decision changes the test for determining whether to issue Court-approved notice to potential plaintiffs in an action brought under § 216(b) of the FLSA; instead of the “modest factual showing” of similarity that courts in the Sixth Circuit applied previously, the standard now “for a district court to facilitate notice of an FLSA suit to other employees, [is that] the plaintiffs must show a ‘strong likelihood’ that those employees are similarly situated to the plaintiffs themselves.”

*A&L Homecare* also clarified that “the term ‘certification’ has no place in FLSA actions.” *A&L Homecare*, at \*2.

In light of *A&L Homecare*, to the extent that Plaintiff's Motion seeks conditional class certification, the Motion is **DENIED**.

To the extent that Plaintiff's Motion seeks approval and distribution of a notice to potential plaintiffs, and for disclosure of contact information for such purposes, the Court hereby **ORDERS** Plaintiff to file a supplemental brief addressing whether he can show a 'strong likelihood' that his proposed potential plaintiff employees are similarly situated to himself. This supplemental brief shall be filed **within 10 days of the date of this Order**. Defendant shall respond with any supplemental brief **within 10 days thereafter**. Neither supplemental brief shall be more than 10 pages.

**IT IS SO ORDERED.**

/s/ Sarah D. Morrison  
**SARAH D. MORRISON**  
**UNITED STATES DISTRICT JUDGE**